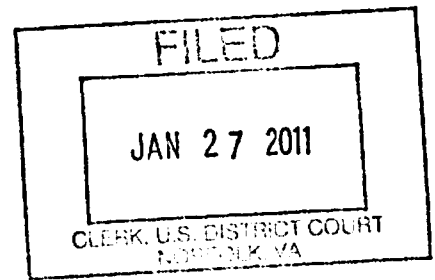


**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



KENNETH F. WHEAT,

Plaintiff,

v.

Civil Action No.: 2:10cv30

**MICHAEL J. ASTRUE, COMMISSIONER,
Social Security Administration,**

Defendant.

OPINION AND ORDER

Plaintiff brought this action under 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3) seeking judicial review of the final decision of the Commissioner of Social Security (“Commissioner”) denying his claim for a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”) under Title II and Title XVI of the Social Security Act. Pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, and by order of reference dated March 24, 2010, this matter was referred to a United States Magistrate Judge for a Report and Recommendation. Doc. 6.

In a Report and Recommendation (“R&R”) filed January 3, 2011, the Magistrate Judge found that the Administrative Law Judge’s (“ALJ”) decision to deny Plaintiff’s claims for a period of disability, DIB, and SSI was not based upon substantial evidence. Doc. 16 at 17. Accordingly, the Magistrate Judge recommended vacating the decision of the ALJ and remanding this case to the Commissioner for further proceedings consistent with the R&R. *Id.* at 20–21.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date the R&R was mailed, pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. The time for filing written objections has passed, and neither party has filed objections. As indicated in the R&R, "failure to file timely objections to the findings and recommendations set forth [in the R&R] will result in a waiver of the right to appeal from a judgment of this Court based on such findings and recommendations." Id. at 21.

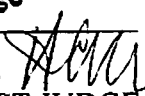
This Court has reviewed the R&R of the Magistrate Judge and hereby **ADOPTS** and **APPROVES** in full the findings and recommendations set forth therein. Accordingly, it is hereby **ORDERED** that the final decision of the Commissioner be **VACATED** and this case be **REMANDED** to the Commissioner for further proceedings consistent with the R&R.

Plaintiff is advised that he may appeal from this Opinion and Final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty (60) days from the date of this Order. If Plaintiff wishes to proceed in forma pauperis on appeal, the application to proceed in forma pauperis is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **REQUESTED** to send a copy of this Opinion and Order to all counsel of record.

It is so **ORDERED**.

/s/
Henry Coke Morgan, Jr.
Senior United States District Judge

HENRY COKE MORGAN, JR. 
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: January 27th, 2011